

Served: November 17, 1997



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 12th day of November, 1997

Applications of

VARIOUS FOREIGN AIR CARRIERS

for exemptions or authorities under 49 U.S.C.
section 40109 and the orders and regulations
of the Department of Transportation

Dockets	OST-95-112	OST-97-2641
	OST-95-324	OST-97-2644
	OST-96-1256	OST-97-2769
	OST-96-1359*	OST-97-2778
	OST-97-2637	OST-97-2894*

ORDER

The foreign air carriers referenced in the attached Notices of Action Taken have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken. Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its foreign air carrier permit, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or our aviation relationship with the applicant's homeland, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

*/ The referenced Notices contain minor editorial or technical changes from the Notices originally issued. Any changes that we may have made are non-substantive in nature and do not affect the authority described in the original Notice in question. To the extent that, following the issuance of a confirmation order, parties or other persons have need to rely on the content of a Notice of Action Taken, they should regard the language in the Notice attached to the order, rather than the language of the original Notice, as the language that the Department is in fact confirming.

For applicant carriers seeking initial operating authority, we determined, based on the record in those proceedings, that those carriers were financially and operationally qualified to conduct the services they proposed, and, unless otherwise noted, that they were substantially owned and effectively controlled by citizens of their respective homelands.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced foreign air carriers (1) exemptions from the provisions of sections 41301, and where necessary 41504, and/or other sections of Title 49 of the U.S. Code; and/or (2) relief or authorizations provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in Appendix A, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-95-112

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicants: **BWIA International Airways Limited (BWIA Limited)** Date Filed: February 4, 1997

Relief requested: RENEW exemption from 49 U.S.C. 41301 to exercise the currently-authorized permit and exemption authority previously issued to Trinidad & Tobago (BWIA Intl.) Airways Corp. in Dockets 39481, 43018, 47182, 47280, 47885, 47903, 47946 and 48648.

If renewal, date and citation of last action: February 20, 1996 (confirmed in Order 96-3-33)

Applicant representative: William Evans 202-371-6030

Responsive pleadings: None

DISPOSITION

Action: **APPROVED, IN PART;
REMAINDER DISMISSED**

Action date: **JUNE 20, 1997**

Effective dates of authority granted: **JUNE 20, 1997, thru JUNE 20, 1998**

Basis for approval (bilateral agreement/reciprocity): U.S.-Trinidad and Tobago Air Services Agreement, and comity and reciprocity.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☐ Standard exemption conditions (attached)

☒ Foreign air carrier permit conditions (Order 82-1-7)

Partial grant/Remarks: The applicant requested that the authority be effective for a period of two years. We dismissed that portion of the carrier's application to conduct the operations beyond June 20, 1998, without prejudice to refile at a later date. The duration of this authority is consistent with our usual policy of granting interim exemption authority. (See, for example, Order 92-8-34.)

Action taken by: Paul L. Gretch, Director
 Office of International Aviation
 under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-95-324

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Air U.K. Limited**

Date Filed: July 2, 1997

Relief requested: AMEND exemption from 49 U.S.C. 41301 and Statement of Authorization under 14 CFR 212, last granted March 24, 1997, to add authority to conduct code-share operations for Northwest Airlines, Inc., between Amsterdam and East Midlands, England.

Applicant representative: Cathleen Peterson 202-298-8660

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **JULY 18, 1997**

Effective dates of authority granted: **JULY 18, 1997, thru JULY 24, 1998**

Basis for approval (bilateral agreement/reciprocity): U.S.-U.K. Air Services Agreement, as supplemented by the June 5, 1995 U.S.-U.K. Memorandum of Consultations

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:
X Standard exemption conditions (attached)

Special conditions: The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in the computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket), and that the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

Docket

OST-96-1256

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Air Caraibes Exploitation**

Date Filed: May 16, 1997

Relief requested: RENEW exemption from 49 U.S.C. 41301 to conduct charter foreign air transportation of persons, property and mail between the French West Indies (Guadeloupe, Martinique, St. Barthelemy and St. Martin) and the U.S. coterminal points Puerto Rico and the U.S. Virgin Islands.

If renewal, date and citation of last action: May 17, 1996 (confirmed in Order 96-8-46)

Applicant representative: Cathleen Peterson 202-298-8660

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **JUNE 20, 1997**

Effective dates of authority granted: **JUNE 20, 1997, thru JUNE 20, 1998**

Basis for approval (bilateral agreement/reciprocity): We found that reciprocity with France supported grant of this authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- ☒ Standard exemption conditions (attached)
- ☐ Foreign air carrier permit conditions (Order)

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



U.S. Department of
Transportation
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-96-1359

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **British Airways PLC**

Date Filed: August 28, 1997

Relief requested: Exemption from 49 U.S.C. 41301 to the extent necessary to conduct scheduled foreign air transportation of persons, property and mail between the United Kingdom and Columbus, Ohio, via its Philadelphia gateway; and to serve Las Vegas via its Los Angeles and San Francisco gateways, for a period of two years. British Airways will conduct these services pursuant to its code-share arrangement with America West Airlines, Inc.

Applicant representative: Don Hainbach 202-822-9070

Responsive pleadings: The Columbus Airport Authority filed an answer in support.

DISPOSITION

Action: **APPROVED**

Action date: **SEPTEMBER 24, 1997**

Effective dates of authority granted: **SEPTEMBER 24, 1997, thru SEPTEMBER 24, 1999**

Basis for approval (bilateral agreement/reciprocity): U.S.-U.K. Air Services Agreement, as supplemented by the June 5, 1995 U.S.-U.K. Memorandum of Consultations

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Foreign air carrier permit conditions (Order 96-9-35)

Remarks: Code-sharing operations must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in the computer reservations systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket).

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2637

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Air Exel Netherlands B.V.**

Date Filed: June 19, 1997

Relief requested: Exemption from 49 U.S.C. 41301 and statement of authorization under 14 CFR 212 to display the designator codes of Northwest Airlines, Inc., and KLM Royal Dutch Airlines on flights operated by Air Exel between Amsterdam and domestic Netherlands markets.

Applicant representative: Charles Donley 202-626-6601

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **JULY 29, 1997**

Effective dates of authority granted: **JULY 29, 1997 thru JULY 29, 1998**

Basis for approval (bilateral agreement/reciprocity): The authority is encompassed in the U.S.-Netherlands Air Transport Services Agreement. We found, based on the record, that the applicant is operationally and financially qualified to conduct the proposed services, properly licensed, and substantially owned and effectively controlled by citizens of the Netherlands. Finally, the FAA has advised us that it knows of no reason to withhold this authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions: The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in the computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket), and that the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2641

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **China Airlines, Ltd.**

Date Filed: June 20, 1997

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between Taipei, Taiwan, and Washington, D.C.

Applicant representative: Jeffrey Shane 202-663-6909

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **JULY 18, 1997**

Effective dates of authority granted: **JULY 18, 1997, thru JULY 18, 1998**

Basis for approval (bilateral agreement/reciprocity): The authority is encompassed in the Air Transport Agreement between the American Institute in Taiwan and the Taipei Economic & Cultural Representative Office, initialed February 28, 1997.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☐ Standard exemption conditions (attached)

☒ Foreign air carrier permit conditions (Order 86-5-48)

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2644

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **EVA Airways Corporation**

Date Filed: June 23, 1997

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail from points behind Taiwan, via Taiwan, and intermediate points, to points in the United States and beyond; and charter foreign air transportation of persons, property and mail between Taiwan and the United States, and between points not in Taiwan and points not in the United States; and other charters pursuant to 14 CFR 212 of the Department's regulations.

Applicant representative: James Devall 202-298-8660

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **JULY 18, 1997**

Effective dates of authority granted: **JULY 18, 1997, thru JULY 18, 1998**

Basis for approval (bilateral agreement/reciprocity): The authority is encompassed in the Air Transport Agreement between the American Institute in Taiwan and the Taipei Economic & Cultural Representative Office, initialled February 28, 1997.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- ☐ Standard exemption conditions (attached)
- ☒ Foreign air carrier permit conditions (Order 91-9-32)

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2769

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Far Eastern Air Transport Corporation**

Date Filed: July 29, 1997

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled and charter foreign air transportation of persons, property and mail between Taiwan and Guam, and other charters pursuant to 14 CFR 212 of the Department's regulations.

Applicant representative: Lisa Helpert 202-662-8011

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **SEPTEMBER 12, 1997**

Effective dates of authority granted: **SEPTEMBER 12, 1997, thru SEPTEMBER 12, 1999**

Basis for approval (bilateral agreement/reciprocity): The authority is encompassed in the Air Transport Agreement between the American Institute in Taiwan and the Taipei Economic & Cultural Representative Office, initialled February 28, 1997. We found, based on the record, that the applicant is operationally and financially qualified to conduct the proposed services, properly licensed, and substantially owned and effectively controlled by citizens of Taiwan. Finally, the FAA has advised us that it knows of no reason to withhold this authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- ☒ Standard exemption conditions (attached)
☐ Foreign air carrier permit conditions (Order - -)

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



U.S. Department of
Transportation
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2778

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicants: **Crossair AG & Swissair, Swiss Air Transport Company, Ltd.** Date Filed: 8/1/97

Relief requested: Exemption from 49 U.S.C. 41301 and statement of authorization pursuant to 14 CFR 212 of the Department's regulations to permit Crossair to display the designator code of Delta Air Lines, Inc., on flights operated by Crossair between any points within Switzerland, and between any point(s) in Switzerland and any point(s) in any third country.

Applicant representative: William Karas 202-429-6223

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **SEPTEMBER 4, 1997**

Effective dates of authority granted: **SEPTEMBER 4, 1997, thru APRIL 30, 1999**

Basis for approval: The authority is encompassed in the U.S.-Switzerland Air Transport Services Agreement. We found, based on the record, that the applicant is operationally and financially qualified to conduct the proposed services, properly licensed, and substantially owned and effectively controlled by citizens of Switzerland. Finally, the FAA has advised us that it knows of no reason to withhold this authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions (attached)

☒ **Special conditions:** (1) The authority to engage in code-share operations contained herein shall automatically expire should Crossair alter its contract of carriage, as evidenced by the copy on file in Docket OST-95-232, in a manner inconsistent with full implementation of the IATA Inter-carrier Agreement on Passenger Liability (IIA) and the Agreement on Measures to Implement the IATA Inter-carrier Agreement (MIA). (2) The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in the computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket), and that the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

Action taken under assigned authority (14 CFR 385) by: Paul L. Gretch, Director
Office of International Aviation

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2894

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **British Airways PLC**

Date Filed: September 11, 1997

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between London-Montreal-Pittsburgh, with local Montreal-Pittsburgh traffic rights, for a period of one year.

Applicant representative: Don Hainbach 202-822-9070

Responsive pleadings: British Airways requested expedited consideration of its application and informed us on September 23, 1997, that it had polled the parties served with its application and that none indicated that they objected to its application.

DISPOSITION

Action: **APPROVED**

Action date: **SEPTEMBER 24, 1997**

Effective dates of authority granted: **SEPTEMBER 24, 1997, thru SEPTEMBER 24, 1998**

Basis for approval (bilateral agreement/reciprocity): U.S.-U.K. Air Services Agreement, as supplemented by the June 5, 1995 U.S.-U.K. Memorandum of Consultations

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Foreign air carrier permit conditions (Order 96-9-35)

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)